United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

Henry W. Hodges,
Clerk.

IN THE

Court of Appeals

OF THE DISTRICT OF COLUMBIA.

322

DECEMBER TERM, 1904.

ELIZABETH M. WILLIAMS, *Appellant,*

vs.

BETTIE G. WILLIAMS, *Appellee.*

No. 1500.

BRIEF IN OPPOSITION TO MOTION TO AFFIRM.

BURTON T. DOYLE,
J. ALTHEUS JOHNSON,
For Appellant.

HAYWORTH PUBLISHING HOUSE, 812 8TH ST., N. W.

In the Court of Appeals of the District of Columbia.

December Term, 1904.

Elizabeth M. Williams, *Appellant*, *vs.* Bettie G. Williams, *Appellee.*	No. 1500.

BRIEF IN OPPOSITION TO MOTION TO AFFIRM.

STATEMENT OF THE CASE.

The Probate Court, by an order made on November 22, 1904, named Bettie G. Williams, the appellee herein, as co-administratrix with this appellant upon the estate of the appellant's deceased husband. At the time the Probate Court made said order, it had before it the mandate of this Court, issued in case No. 1438 upon the docket of this Court, wherein the order of that court of May 13, 1904, was reversed for having named Elizabeth Mulloy as co-administratrix with this appellant upon the said estate.

A reference to the record in that case (No. 1438 of this Court) will disclose that this appellant on May 2, 1904, applied to the lower court for letters of administration upon the estate of her deceased husband, who had departed this life in April, 1904; that the decedent left four children, all minors—two by this appellant and two by a former wife; that the two children by the former wife, though "under age and, therefore, not competent to take letters" themselves,

filed a petition by their next friend and asked for the appointment of their maternal grandmother as administratrix, and that the court below, on May 13, 1904, made the order which named the said grand-mother (the mother of decedent's first wife) co-administratrix with this appellant, which order (as above stated) was reversed by this Court, the mandate of reversal having been filed in the court below, November 18, 1904.

On November 21, 1904, the appellee herein (the elder of decedent's two children by his first wife) who, pending the appeal in No. 1438, had reached the age of 18 years, filed a petition in her own name, asking that she be appointed either as sole or joint administratrix upon the estate of the decedent, but no citation against this appellant, against the two children of this appellant or their guardian *ad litem* was issued or served under the said petition, nor was opportunity given to meet the said petition, until the court's action thereon had been requested; at which time, counsel for appellant (then in court on notice to the other side for an order under the mandate of November 18, 1904), seeing that the court was disposed to act forthwith on the petition just then filed and to make the petitioner a joint administratrix with this appellant, begged permission to furnish the court with reasons against a joint administration. The signing of a formal order in the premises was thereupon postponed by the court until the following morning. Counsel for the appellant, before the day was over, placed in the hands of the court a copy of the memorandum, the original of which was filed in the cause the next day, November 22, 1904. This memorandum (which is copied as part of the record in this appeal) called the attention of the court below to the attitude of this appellant toward the object of the petition of November 21, 1904, and the appointment sought by it; but, notwithstanding said memorandum and the objections to which (on November 21, 1904,) it called

the court's attention, the court afterwards (to-wit: the next day) signed the decree herein appealed from, joining the said Bettie G. Williams in administration with this appellant against the latter's objection, thus made known by counsel; and this appeal is taken from so much of said decree, based upon said petition of November 21, 1904, as names the said Bettie G. Williams co-administratrix with this appellant against the latter's protest.

ASSIGNMENT OF ERRORS.

In joining the said Bettie G. Williams in administration with this appellant, thus forcing upon this appellant, against her protest, joint administration with another person, the court below erred:

1. Because it sought to impose administration upon two persons jointly when such persons, by reason of the influence back of one of them, could not be expected to act harmoniously together.

2. Because it disregarded the true meaning of the opinion of this Court, delivered in the former appeal in this cause, which, while suggesting that a child eligible for administration might be named along with the widow, declares that the policy of the law is against the forcing of joint administrations—thus making plain the principle that, while the creation of a joint administration rests in the discretion of the court, it never is to be exercised in forcing a joint administration upon unwilling parties—upon persons who do not mutually agree to accept the trust.

3. Because, the question of priority being properly determinable at the time when the first appointment in this case was made, the said Bettie G. Williams being ineligible for appointment at that time and the right of the widow being "exclusive of all other parties," the court below should

have granted this appellant sole administration instead of imposing upon her forced administration with another person whose eligibility, at the very time of that joint appointment, grew out of the delay occasioned by the former error of the court below.

ARGUMENT.

Brubaker's Appeal, 98 Pa. St., 21, shows the view universally entertained by the courts touching the matter of joint administration, when the parties do not consent to serve jointly. In that case, the decedent was a widower who left, as his only heirs at law and next of kin, two married daughters, Mrs. Brubaker and Mrs. Wolf, the former being the elder. Shortly after the father's death, the Register granted letters of administration to the elder daughter, Mrs. Brubaker, without the knowledge or consent of the other daughter, who thereupon filed her own petition, alleging that such appointment had been made without her knowledge or consent and contrary to the assurance of the Deputy Register that letters should not be granted to either until both of them had been heard. Mrs. Wolf averred in her petition an equal right with her sister to administer and prayed that she might be joined in administration with her sister. The Register denied her petition and she appealed to the Orphans Court which, after a rule upon Mrs. Brubaker and the taking of depositions, ordered that letters issue to Mrs. Wolf also, a co-ordinate and not a joint administration. Thereupon, Mrs. Brubaker, the original appointee, appealed to the Supreme Court of the State; and that Court, while rejecting the co-ordinate administration as unwarranted in the law declared also the legal impropriety of attempting to create joint administrations against the

protest of one of the parties to it. In the course of its opinion, the Supreme Court of Pennsylvania says:

"The learned Judge (the Orphans Court Judge), in his opinion says: 'The present administratrix and the appellant are both equally competent to perform the duties of administrator; both stand in equal degree of relationship to the decedent; both have equal share or interest in his estate; and, looking on this appeal, we look at the whole case on its merits and rights of the respective parties, and we are of opinion that letters of administration should be granted to this appellant, that both may be on an equality. But the court does not feel at liberty to enjoin a joint administration between these sisters; indeed, the prevailing rule is not to enforce a joint administration on unwilling parties.'

"It is very evident, from this, that the court (the Orphans Court) recognized the impropriety of attempting to create a joint administration against the protest of one of the parties thereto. THE NATURE OF THE OFFICE FORBIDS IT. *Joint administration necessarily involves joint liability and no one can be compelled to assume such responsibility. Due regard to individual rights, as well as to the interests of the estate, require that administration should not be committed to two or more persons, unless they mutually agree to accept the trust.* Nor does the decree in this case require joint administration. If it did, it would be manifestly wrong; but its effect is to create two separate, co-ordinate administrations on the same estate; and, for that reason, it is equally objectionable. Such a thing is unknown to our jurisprudence, even in theory; and, in practice, it would be entirely impracticable. Under the English statute, the Ordinary may commit the administration to the widow and the next of kin jointly, or he may grant to one exclusive administration of a particular portion of the goods of the intestate, and to the other a separate administration of the residue; but no warrant for any such practice as that contemplated by the decree of the Orphans Court can be found in our statute.

"When the class primarily entitled to administration consists of several persons, it is the duty of the Register to

grant letters to such one or more of them as he shall judge will best administer the estate. He may thus grant letters to them all jointly, if they so desire; or, in his discretion, he may select one of them and commit the administration to him alone, to the exclusion of the others; and, when properly exercised, his discretion is not a subject of review, either in the Orphans Court or here. He is not bound to select the oldest in preference to the youngest of the class entitled to administration; * * * yet, if things are precisely equal—if the scale is exactly poised—being the elder brother would incline the balance. * * * But, when he has exercised his discretion by selecting one of them, it is no longer in his power to revoke the letters thus granted and issue them to another, except for sufficient cause. * *

"In the case before us, the two daughters of the intestate were equally competent to administer and the Register might have granted letters to both jointly, IF THEY HAD SO DESIRED, but he was not bound to do so. In the exercise of his discretion, he selected Mrs. Brubaker who requested that letters should be issued to herself alone. Having done so, it was not in his power to revoke the letters thus granted, or to join the younger sister in the administration against the will of the other. Nor is there anything in the circumstances, as disclosed by the testimony, to justify the Court in reversing the decision of the Register and creating a dual administration, which, if it could be permitted to stand, would undoubtetdly be prejudicial to the interests of the estate."

If the court below had the discretion to appoint Bettie G. Williams at all, that discretion came to it as the fruit of its own error, and no court should take advantage of its own error to the disadvantage of an innocent party before it, since one of the old law maxims is: "An Act of the court shall prejudice no one." When the court below was called upon to act in this case first, "The children were under age and, therefore, not competent to take letters; and the right of the widow was exclusive of all other parties." But the court did not then recognize that exclusive right of the widow, preferring to join another person with her in the ad-

ministration; and, while the widow was, through an appeal to this Court, getting around that error of the court below, the elder one of those children (who "were under age and, therefore, not competent to take letters" when the court first acted) became of age; and the court below then proceeded to recognize, as being on equal terms with that of the widow, an eligibility thus created, as it were, by the court's own error. It would have been much more graceful, under the circumstances, for the court below to have very promptly undone the injustice to this appellant found in its first decree of denial of her right when it was exclusive of all others. At that time, she had an unquestionable right to sole administration, there being no one else in her class competent under the law (and the Court of Appeals of Maryland, where the statutory law on the subject is identical with our own, holds that the priority of right to administer is to be determined with reference to the parties at the time of the original application for letters, the time the court is first called upon to act in a case, Griffith v. Coleman, 61 Md., 250). The appellant had a vested right to sole administration when the court below was called upon to act in this case and when it committed its first error; and the effect of that error ought not now to be visited upon this appellant by depriving her of a right which, as said by this Court, "was exclusive of all other parties" at the time that error was committed. The very eligibility of the appellee to present a petition to the lower court (whose action upon the said petition has resulted in this appeal) is predicated upon and grows out of an error of that court. An innocent party should not be deprived of a valuable right by reason of an error committed by the court. A court, no less than an individual, should be just before it is generous; and the court below should have been just to this appellant by undoing the wrong which it had formerly done her, rather than gen-

erous to this appellee by conferring upon her a privilege which she did not have a right to ask and which the court did not have the power to grant except by taking advantage of the court's own error to the prejudice of this appellant.

BURTON T. DOYLE,

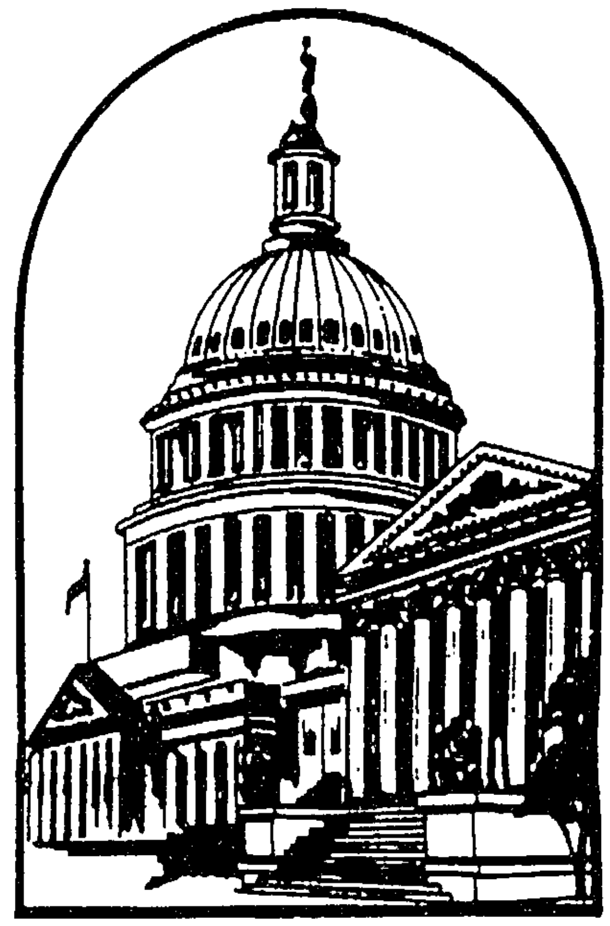
J. ALTHEUS JOHNSON,

For Appellant.

TITLE GUIDE

United States Circuit Court Of Appeals

D.C. CIRCUIT



CASE NAME C.J. UBHOFF VS. C.A. BRANDENBURG

DATE 1904

DOCKET NO. 1501

OFFICIAL CITE NO.